

Michael W. Chen, Esq.
 Nevada Bar No. 7307
 Charles L. Kennon, III, Esq.
 Nevada Bar No. 7772
 THE COOPER CASTLE LAW FIRM
 A Multi-Jurisdictional Law Firm
 5275 S. Durango Drive
 Las Vegas, NV 89113
 (702) 435-4175/(702) 259-6560 (facsimile)
 ckennon@ccfirm.com
 Loan No. *****7672/8556-N-175 / Our File No. 11-10-35642-NV

Attorney for Secured Creditor Nationstar Mortgage, LLC

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

In re:

ARTHUR EINHORN,
 CAROL ANN EINHORN

Plaintiffs,

v.

NATIONSTAR MORTGAGE, a
 foreign limited liability company;
 DOES 1-10 and DOE
 CORPORATIONS 1-10

Defendants

CHAPTER 7
 BANKRUPTCY NO.: 11-19087-BAM
 ADV. CASE NO.: 11-01244-BAM

TRIAL
 DATE: November 28 and 29, 2012
 TIME: 9:30 a.m.

TRIAL STATEMENT

TO:	ARTHUR EINHORN AND CAROL ANN EINHORN, DEBTOR(S)
TO:	H STAN JOHNSON, ESQ., ATTORNEY FOR THE DEBTOR(S)
TO:	JOSEPH B. ATKINS, CHAPTER 7 TRUSTEE
TO:	ALL INTERESTED PARTIES
TO:	THE CLERK OF THE ABOVE-ENTITLED COURT

Secured Creditor and Defendant herein, Nationstar Mortgage, LLC, hereby submits to the Court its Trial Statement in the above-referenced matter.

DISCLOSURES

- Pursuant to Fed. R. Civ. P. 26(a)(3), as adopted by Fed. R. Bankr. P. 7026 and LR

1 7026, Defendant Nationstar Mortgage, LLC (hereinafter "Nationstar" or "Defendant") intends to
2 call as a witness Elizabeth Santoro, Nationstar Mortgage, 10350 Park Meadows Drive, Lone Tree
3 CO 80124, 303-515-8228. She is deemed by Nationstar as the person most knowledgeable
4 regarding the transactions raised in Plaintiffs' complaint herein.
5

6 2. As document exhibits Nationstar intends to produce the following, copies of which
7 are attached hereto:

- 8 a. Interest-Only Period Fixed Rate Note executed by Arthur Einhorn on July 26, 2007.
9 b. Deed of Trust executed by Arthur Einhorn and Carol Ann Einhorn on July 26, 2007
10 and recorded in Clark County Nevada as instrument 20070801-0001200.
11 c. Loan Modification Agreement executed by Arthur Einhorn and Carol Ann Einhorn
12 with Nationstar on July 24, 2009 for the subject property.
13 d. Reaffirmation Agreement executed by Arthur Einhorn with Nationstar Mortgage for
14 the subject property, filed as Doc #22 on July 29, 2010 in case number 10-18277-bam.
15 e. Correspondence from Nationstar Mortgage to Arthur Einhorn, commencing March,
16 2010.
17
18

19
20 **FACTS**

21 1. Plaintiff Arthur Einhorn filed a Chapter 7 bankruptcy, case number 10-18277-bam,
22 on May 5, 2010. During the pendency of his case he entered into a Reaffirmation Agreement related
23 to real property located at 2284 Autumn Fire Court, Las Vegas, NV 89129 ("the property"), which
24 property is Nationstar's collateral by virtue of a note executed by Arthur Einhorn as borrower on
25 July 26, 2007. Both Arthur and Carol Ann Einhorn are trustors by virtue of executing the Deed of
Trust on the property also on July 26, 2007. Both Carol Ann Einhorn and Arthur Einhorn signed
and executed as "borrowers" on July 24, 2009 a Loan Modification Agreement with Nationstar
regarding the subject property.

1 2. The Plaintiffs contend that Nationstar has violated the Reaffirmation Agreement by
2 demanding as payment an amount in excess of the terms of the Agreement. They also allege that
3 Nationstar has reported Arthur Einhorn as a late pay to credit reporting agencies.

4 3. Arthur Einhorn received his Chapter 7 discharge on August 16, 2010 and Carol Ann
5 Einhorn filed this subject Chapter 7 bankruptcy on June 9, 2011. Plaintiffs contend that Nationstar
6 as continued to make collection efforts for the indebtedness on the property. They assert that these
7 efforts violate the automatic stay provisions of 11 U.S.C. § 362(a) and (h), as well as constituting
8 breach of contract and violations of the Fair Debt Collection Practices Act and the Fair Credit
9 Reporting Act.
10

11 4. Defendant Nationstar Mortgage, LLC denies the allegations.
12

13 5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and this court has
14 jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and § 157(b), and
15 additionally under 11 U.S.C. § 362.
16

17 6. The parties stipulate to the following:

18 **POINTS AND AUTHORITIES**

19 1. The discharge injunction provisions of 11 U.S.C. § 524(a)(3) does not apply if a
20 Debtor enters into a reaffirmation agreement pursuant to 11 U.S.C. § 524 (c). Furthermore, upon a
21 debtor's receipt of a bankruptcy discharge the estate created by the filing of the petition no longer
22 exists. *Dumont v. Ford Motor Credit Company*, 581 F.3d 1104 (9th Cir. 2009). In the instant case
23 the reaffirmation agreement entered into by Arthur Einhorn with Nationstar did not involve Carol
24 Ann Einhorn; she was not a borrower. At the time of the complained-of efforts by Nationstar to
25 contact him he was no longer in bankruptcy, there was neither an automatic stay nor discharge
injunction in effect for the reaffirmed liability. Any complaint as to an alleged violation of his
discharge injunction should be brought in his case. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502
(9th Cir. 2002). There is thus no basis for Arthur Einhorn to be a party plaintiff in this action.

1 2. Carol Ann Einhorn was not a borrower on the note for the subject property.

2 3. The complained-of efforts to contact Arthur Einhorn regarding the debt were
3 addressed to him alone. There was no effort to collect on the debt from her, and she had not signed
4 the reaffirmation agreement in any event. While she was protected by the automatic stay as to her
5 debts, the note for the subject property was in Arthur's name alone and the efforts to contact him
6 were directed at him alone. For any violation of the stay to be deemed willful as to her (or him),
7 knowledge of the injunction much be expressly found, rather than simply imputed. *In re ZiLOG,*
8 *Inc.*, 450 F.3d 996 (9th Cir. 2006). In this instance, the efforts to collect from Arthur Einhorn were
9 for a reaffirmed debt where there was no discharge in place. There were no efforts to collect from
10 Carol Ann Einhorn that would constitute a violation of the stay in effect in her case.
11

12 4. Plaintiffs' claims under the Fair Credit Reporting Act, 15 U.S.C. §1681, et seq.
13 ("FCRA"), should be denied and dismissed. Plaintiffs have not alleged or shown that Defendant is
14 a credit reporting agency under the FCRA. Indeed, Defendant is not a credit reporting agency here,
15 as defined by the FCRA. See 15 U.S.C. § 1681a(f). Plaintiffs' claims as set forth in the Complaint
16 against Defendant regard information that Defendant furnished to the credit reporting agencies.
17 Defendant has not credit reported regarding Carol Ann Einhorn. Additionally, the FCRA does not
18 create a private right of action for borrowers against furnishers except on very limited bases. See
19 generally 15 U.S.C. § 1681s-2 and 15 § USC 1681h(e). Enforcement is reserved to governmental
20 agencies. See generally 15 U.S.C. § 1681s-2(d). Plaintiffs may only bring FCRA claims if
21 Plaintiffs provide a notice of dispute and Defendant receives the notice and does not act in
22 accordance with 15 U.S.C. § 1681s-2(b). Here, the facts do not support this claim, and it should be
23 denied.
24

25 5. The Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq. ("FDCPA"), does
not apply to Defendant. Defendant is not a debt collector as defined in 15 U.S.C. §1692a(6)
because it does not apply to entities collecting their own debt. The FDCPA also does not apply to

1 loan servicers. See *Croce v Trinity Mortgage Assurance Company*, 2009 U.S. Dist. LEXIS 89808,
2 *6 (D. Nev. 2009). This claim must also be denied and dismissed.

3 6. Plaintiffs' claim for breach of contract should also be denied and dismissed. "To
4 prevail on a breach of contract claim, a plaintiff must demonstrate: (1) the existence of a valid
5 contract; (2) a breach by the defendant; and (3) damages resulting from defendant's breach."
6 *Peshek v Litton Loan Servicing*, 2011 U.S. Dist. LEXIS 110304 *16 (D. Nev. 2011) (citations
7 omitted). Plaintiff Carol Ann Einhorn was not a party to the reaffirmation agreement that is the
8 basis for this claim. Moreover, Defendant has recently modified the loan to match the somewhat
9 ambiguous terms of the reaffirmation. Plaintiffs have not proven any damages. The claim should
10 be denied.
11
12

13 CONCLUSION

14 For the reasons set forth above, each of the claims for relief alleged and asserted by
15 Plaintiffs Arthur and Carol Ann Einhorn should respectfully be denied.
16
17

18
19 Date: November 26, 2012

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24 Attorney for Nationstar Mortgage, LLC
5275 S. Durango Drive
25 Las Vegas, NV 89113

CERTIFICATE OF SERVICE

The undersigned hereby declares and certifies that on November 26, 2012, a copy of the Secured Creditor's TRIAL BRIEF was served on the parties through the following means:

Electronically mailed to:

COUNSEL FOR DEBTOR(S)
H STAN JOHNSON, ESQ.
sjohnson@cjdnv.com

TRUSTEE
Joseph B. Atkins
jbatkins@7trustee.net

Depositing a copy in the United States Mail, postage prepaid and addressed to:

Carol Ann Einhorn
8671 Christopher Lee Circle
Las Vegas, NV 89129

I declare under penalty of perjury that the foregoing is true and correct.


An employee of THE COOPER CASTLE LAW FIRM

1 **Shaded Area for Court Personnel Use ONLY

2 Hearing

3 Date:

BTB

LBR

BAM

MKN

EXHIBITS		Case Title		BK-S	ADV-
Offered	Admitted	Identification		Description	Offers Objections Rulings Exceptions
		#	Witness		
		A		Note	
		B		Trust Deed	
		C		Loan Modification	
		D		Reaffirmation	
		E		Debtor Correspondence	

25 usbc/updated 3/11
exhibit-list.wpd

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